

No. 1-12-1531

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE INTEREST OF JONATHAN G., a minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 12 JD 1160
v.	)	
	)	
JONATHAN G., a minor,	)	
	)	
Respondent-Appellant.)	)	Honorable
	)	Stuart Lubin,
	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Justices Simon and Liu concur in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's finding of delinquency for aggravated unlawful use of a weapon under section 5/24-1.6(a)(1), (a)(3)(A) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2012)) is vacated pursuant to *People v. Aguilar*, 2013 IL 112116. Defendant's remaining counts of aggravated unlawful use of a weapon do not violate the second amendment. Defendant's finding of delinquency for unlawful possession of a firearm does not violate the second amendment. Finally, under one-act, one-crime principles we remand this case to the trial court for a determination as to which remaining counts require vacatur.

¶ 2 Following a delinquency hearing, defendant Jonathan G., was adjudicated delinquent based on three counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6 (West 2008)) and one count of unlawful possession of a weapon (UPF) (720 ILCS 5/24-3.1(a)(1) (West 2012)) and was sentenced to an indeterminate sentence in the Department of Juvenile Justice. Defendant now appeals and challenges the constitutionality of his convictions. For the following reasons, we vacate defendant's conviction for possessing an uncased, loaded and immediately accessible firearm in violation of section 24-1.6(a)(1), (a)(3)(A) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2012)) and affirm the remaining findings of delinquency.

¶ 3 **BACKGROUND**

¶ 4 Defendant, who was 16 at the time of the offense, was charged with three counts of AUUW and one count of UPF. As for the AUUW counts, defendant was charged with violating section 24-1.6(a)(1), (a)(3)(A), which criminalizes the possession of an "uncased, loaded and immediately accessible" firearm on one's person or in one's vehicle, section 24-1.6(a)(1), (a)(3)(C), which criminalizes the possession of a firearm on one's person or in one's vehicle without a valid Firearm Owner's Identification Card (FOID card), and section 24-1.6(a)(2), (a)(3)(I), which criminalizes the possession of firearm that is "uncased, loaded, and immediately accessible" and the person in possession of the weapon "was under 21 years of age and in possession of a handgun as defined in Section 24-3." 720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (a)(3)(C), (a)(3)(I) (West 2012). Defendant was also charged with one count of UPF for being a person under the age of 18 and knowingly possessing a firearm. 720 ILCS 5/24-3.1(a)(1) (West 2012).

¶ 5 The record shows that a handgun was found on defendant's person pursuant to a custodial

search after defendant was stopped for a curfew violation. Officer Khan testified that at 2:00 a.m. on morning of March 24, 2012, he responded to a call of shots fired and encountered defendant, whom he knew to be minor from previous interactions and another individual he also knew to be a minor. Officer Khan placed defendant into custody for a curfew violation. He observed defendant grab his right side near his waistband. Before placing defendant in the squad car, he completed a custodial search and discovered a handgun in the pocket of his hoodie, the same area defendant had grabbed. The handgun was "hot" and was loaded with six live rounds.

¶ 6 The defense called no witnesses. After hearing the evidence, the court stated, "[t]here is a finding of delinquency." The sentencing order shows that defendant was found guilty of "AGGUUW c. 1-4." At sentencing, the court stated that defendant was already on probation for possessing a gun so it made a "finding of best interest and wardship. There is also a finding of inability and best interest, commit to Department of Juvenile Justice. Aggravated unlawful use of a weapon, it's a Class IV felony. The maximum adult sentence would be three years in the penitentiary." It is from this order that defendant appeals.

¶ 7 ANALYSIS

¶ 8 Defendant was found delinquent of three counts of AUUW and one count of UPF. Count I was based on defendant's possession of an uncased, loaded, and immediately accessible firearm. 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2012). Count II was predicated on defendant's possession of a firearm in conjunction with his inability to produce a valid FOID card. 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012). Count III was based on defendant's possession of a firearm while he was under the age of 21. 720 ILCS 5/24-1.6(a)(1),(a)(3)(I) (West 2012). In count IV, defendant was charged with the unlawful possession of a firearm

while being under the age of 18 in violation of section 24-3.1(a)(1). 720 ILCS 5/24-3.1(a)(1) (West 2012).

¶ 9 To convict a defendant of AUUW, the State must prove beyond a reasonable doubt either that a defendant carried a weapon on his person or in his vehicle, outside his home (720 ILCS 5/24-1.6(a)(1) (West 2008)) or carried a weapon on his person on the public way (720 ILCS 5/24-1.6(a)(2) (West 2008)) and one of the nine factors in subsection (a)(3). 720 ILCS 5/24-1.6(a)(1) to (a)(3) (West 2008); *People v. Zimmerman*, 239 Ill. 2d 491, 499 (2010). Subsection (a)(3) lists the nine factors that " 'transform' " the offense of unlawful use of a weapon to AUUW. *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 21; 720 ILCS 5/24-1.6(a)(3) (West 2008). Relevant to this case are factors (3)(A), the firearm was uncased, loaded and immediately accessible, (3)(C), the person possessing the firearm had not been issued a valid FOID card and (3)(I), the person possessing the firearm was under the age of 21.

¶ 10 Defendant argues, and the State agrees, that his finding of delinquency for AUUW for unlawfully possessing a loaded, uncased, accessible firearm should be vacated. Recently, in *Aguilar*, 2013 IL 112116, ¶ 22, our supreme court found the Class 4 form of AUUW that makes it illegal to possess an uncased, loaded firearm outside one's home to be a comprehensive ban that categorically prohibits possession and use of a firearm for self-defense outside of the home in contravention of the second amendment right to bear arms. 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2008); *Aguilar*, 2013 IL 112116, ¶ 16. Accordingly, we vacate defendant's finding of delinquency for possessing a loaded, uncased, accessible firearm in count I.

¶ 11 *People v. Henderson*, 2013 IL App (1st) 113294, is dispositive of defendant's next two arguments, that his finding of delinquency for possession of a firearm without a valid FOID card

and his finding of delinquency for possessing a firearm and being under the age of 21 violate the second amendment right to bear arms. 720 ILCS 5/24-1.6(a)(1), (a)(3)(C), (a)(3)(I) (West 2012). Relying on *Coram v. State of Illinois*, 2013 IL 113867 (the Illinois Constitution grants individualized rights, which allows for individualized consideration of a person's right to keep and bear arms, including the right to consider and reject an application for a FOID card), the *Henderson* court rejected the defendant's argument that the failure to possess a valid FOID card (720 ILCS 5/24-1.6(a)(3)(C) (West 2008)), used to transform an otherwise lawful use of a weapon offense under either subsection (a)(1) or subsection (a)(2) to an AUUW, is unconstitutional (720 ILCS 5/24-1.6(a)(1), (a)(3)(C), (a)(2), (a)(3)(C) (West 2008)), as it denies adults 18 to 20 years of age the right to keep and bear arms for the purpose of self-defense. *Henderson*, 2013 IL App (1st) 113294, ¶ 30 (rejecting defendant's claim that "the public carriage of handguns by those under 21 is core conduct subject to second amendment protection").

¶ 12 Subsequently, in *People v. Taylor*, 2013 IL App (1st) 110166, ¶ 32, this court upheld the FOID card subsections of the AUUW statute, finding that:

"Because the restriction in section 24-1.6(a)(1), (a)(3)(C) is limited to those lacking a FOID card and is not a flat ban, we decline to extend the holding of *Aguilar* to this section of the AUUW statute. Moreover, under either strict scrutiny analysis or the more recently used 'text, history, and tradition' approach, this section of the AUUW statute does not violate the right to bear arms guaranteed under the second amendment. We, therefore, find that section 24-1.6(a)(1), (a)(3)(C) is not facially unconstitutional."

¶ 13 Furthermore, we find nothing in *Aguilar* to support defendant's arguments that the FOID subsection or the under 21 subsection are unconstitutional. Instead, the *Aguilar* court limited its

holding to the portion of the AUUW statute dealing with an uncased, loaded and immediately accessible firearm (720 ILCS 5/24-1.6(a)(1), (a)(3)(A)). In doing so, the *Aguilar* court stated, “[o]f course, in concluding that the second amendment protects the right to possess and use a firearm for self-defense outside the home, we are in no way saying that such a right is unlimited or is not subject to meaningful regulation.” *Aguilar*, 2013 IL 112116, ¶ 21. The court then concluded that, “we need only express our agreement with the obvious and undeniable conclusion that the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection.” *Id.* ¶ 27. Defendant has provided no valid reason to depart from *Aguilar* or our subsequent holdings in *Henderson* or *Taylor*. Consequently, we find that defendant’s finding of delinquency for possessing a gun without a FOID card and possessing a gun while being under the age of 21, under counts II and III must stand.

¶ 14 Defendant further contends that his adjudication for UPF as a minor must be reversed because the relevant statute violates the federal and state guarantees regarding an individual's right to bear arms. In *Aguilar*, 2013 IL 112116, ¶¶ 25-28, our supreme court rejected a second amendment challenge to the UPF statute. The court concluded that the second amendment did not offer protection to the possession of a handgun by a minor. As such, we conclude that the UPF statute does not violate respondent's constitutional right to bear arms and affirm the finding of delinquency on this count.

¶ 15 In its adjudication order, the trial court did not specifically list the counts that defendant was adjudged guilty of. However, the sentencing order lists a finding of guilty for counts I through IV. Because we have vacated defendant's finding of delinquency for possessing a loaded, uncased, accessible firearm in count I, defendant now stands convicted of two counts of

AUUW and one count of UPF. Defendant argues that under the one-act, one-crime rule (*People v. King*, 66 Ill. 2d 551, 566 (1977)), this court should vacate two of the remaining counts, leaving defendant with a finding of delinquency as to only one count, where the findings of adjudication were based on the single act of possessing a gun.

¶ 16 The one-act, one-crime rule prohibits multiple convictions when the convictions are based on precisely the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). Only one conviction and sentence may be imposed if the same physical act forms the basis for prosecuting. *People v. Segara*, 126 Ill. 2d 70, 76-77 (1988). However, if guilty verdicts are obtained for multiple counts arising from the same act, then a sentence should be imposed on the most serious offense. See *People v. Donaldson*, 91 Ill. 2d 164, 170 (1982).

¶ 17 Here, the three remaining counts are as follows: count II was AUUW predicated on defendant's possession of a firearm in conjunction with his inability to produce a valid FOID card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012)), count III was AUUW based on defendant's possession of a firearm while he was under the age of 21 (720 ILCS 5/24-1.6(a)(1),(a)(3)(I) (West 2012)) and count IV, where defendant was charged with UPF while being under the age of 18 in violation of section 24-3.1(a)(1) (720 ILCS 5/24-3.1(a)(1) (West 2012)).

¶ 18 In *In re Samantha V.*, 234 Ill. 2d 359, 379 (2009), our supreme court instructed that when determining the most serious offense, a court of review should “consider the plain language of the statutes, as common sense dictates that the legislature would prescribe greater punishment for the offense it deems the more serious.” If the punishments are identical, then the reviewing court must determine which offense has the more culpable mental state. *Id.* at 379. However,

"[w]hen it cannot be determined which of two or more convictions based on a single physical act is the more serious offense, the cause will be remanded to the trial court for that determination."

*People v. Artis*, 232 Ill. 2d 156, 177 (2009).

¶ 19 We cannot determine by examining the required mental state of the three remaining counts which is the more serious offense. Therefore, we must remand this cause to the juvenile court for the court to determine whether to enter a finding of delinquency on the possession without a FOID card, the possession while being under 21, or the UPF. The remaining two counts should be vacated.

¶ 20 **CONCLUSION**

¶ 21 For the foregoing reasons, we vacate defendant's finding of delinquency under count I, possessing an uncased, loaded and accessible firearm, and affirm the findings of delinquency on the remaining counts. Pursuant to the one-act, one-crime rule, we remand this cause to the juvenile court for the court to enter a finding of delinquency on the most serious of the three counts and vacate the remaining two counts.

¶ 22 Vacated in part; affirmed in part; remanded.